**Electri-Tech, Inc. *and* Local 58, International Brotherhood of Electrical Workers, AFL–CIO**

**Electric One, Inc. *and* Local 58, International Brotherhood of Electrical Workers, AFL–CIO.** Cases 7–CA–31773 and 7–CA–31855

March 16, 1992

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon charges filed by the Union on April 15, 1991 (amended May 23, 1991), in Case 7–CA–31773, and on May 6, 1991, in Case 7–CA–31855, the General Counsel of the National Labor Relations Board on June 12, 1991, consolidated the cases and issued a complaint (amended December 20, 1991) alleging that Electri-Tech is the alter ego of, and a single employer with, Electric One (jointly referred to as the Respondents), and that they violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondents have failed to file an answer.[1]

On January 29, 1992, the General Counsel filed a Motion for Summary Judgment. On February 7, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board.'' In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] The Respondents did not file an answer to the December 20, 1991 amendment to the complaint. By letters from their attorneys dated December 20 and 23, 1991, respectively, Electri-Tech and Electric One advised the Regional Director for Region 7 that they wished to withdraw the answers filed in this case, and further waived ''any time limits in the Board's Rules and Regulations pertaining to the filing of a motion for summary judgment with the Board.'' The Respondents' withdrawal of their answers has the same effect as a failure to file an answer. *Maislan Transport*, 274 NLRB 529 (1985).

## FINDINGS OF FACT

### I. JURISDICTION

The Respondents are Michigan corporations with an office and place of business at 13155 Cloverdale, Suite A, Oak Park, Michigan, the only facility involved in this proceeding, where they are engaged in the electrical contracting business. During the 12-month period ending May 30, 1991, a representative period, the Respondents each purchased and received at their various Michigan jobsites products, goods, and materials valued in excess of $50,000 from other enterprises, including Brightmore Electric Company, that are located within the State of Michigan, which enterprises in turn received the products, goods, and materials directly from points and places outside the State of Michigan. We find that the Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

On or about October 4, 1988, Electric One recognized the Union as the exclusive collective-bargaining representative of its employees in an appropriate unit, such recognition having been embodied in a letter of assent dated October 4, 1988, and in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period of June 7, 1989, to May 31, 1992.[2] The bargaining unit consists of:

> All full-time and regular part-time employees employed by the Respondents performing electrical construction work within the jurisdiction of the Charging Union on all present and future jobsites; but excluding all guards and supervisors as defined in the Act.

On or about October 1, 1990, Electri-Tech was established as a disguised continuance of Electric One. At all relevant times, the Respondents have been affili-

[2] The commerce data and the unit description in the complaint suggest that Electric One and Electri-Tech are construction industry employers subject to the provisions of Sec. 8(f) of the Act. However, we are unable to determine from the complaint or from the documents submitted by the General Counsel in support of the motion whether the bargaining relationship between the Respondents and the Union was established pursuant to Sec. 8(f) or pursuant to the Union's showing of Sec. 9(a) majority support. Under *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), a union signatory to an 8(f) contract attains only limited 9(a) status confined to the terms of the contract. The burden of showing that a bargaining relationship between a union and a construction industry employer is not an 8(f) relationship is on the party asserting 9(a) status. *Deklewa*, supra at 1385 fn. 41. In the absence of an allegation that the bargaining relationship was based on a showing of a 9(a) majority support, we find that relationship was entered into pursuant to Sec. 8(f) and that the Union is, therefore, the limited Sec. 9 representative of the Respondents' employees for the period covered by the contract.

ated business enterprises with common family ownership, common family officers, common management and common supervision, and have formulated and administered a common labor policy affecting employees of both operations. Both entities have shared common premises and facilities, have provided services for each other, and have interchanged personnel. The complaint alleges, and we find, that at all relevant times the Respondents have been alter egos and a single employer within the meaning of the Act.

Beginning on or about October 15, 1990, Electri-Tech transferred work and contracted jobs from Electric One to itself in order to avoid Electric One's contractual obligations to the Union and, since on or about the same date, has failed and refused to recognize the Union as the bargaining representative of the unit employees, and to abide by the terms of the collective-bargaining agreement with the Union covering those employees. By engaging in such conduct, the Respondents violated Section 8(a)(1), (3), and (5) of the Act, as alleged.

On or about March 12, 1991, and again on or about April 15, 1991, the Union requested Electric One to provide it with information concerning its alter ego relationship with Electri-Tech, which the Union contends is necessary and relevant to the performance of its role as the collective-bargaining representative of the unit employees, but, since on or about the same date, Electric One has refused to do so. By refusing to provide the Union with the requested information, the Respondents violated Section 8(a)(1) and (5) of the Act, as alleged.

## CONCLUSIONS OF LAW

1. The Respondents Electri-Tech and Electric One are alter egos and a single employer within the meaning of the Act.

2. By transferring work and contracting jobs from Electric One to Electri-Tech in order to avoid their contractual obligation to the Union, and by refusing to recognize the Union as the exclusive collective-bargaining representative of the unit employees and refusing to abide by the terms of the collective-bargaining agreement, the Respondents have violated Section 8(a)(1), (3), and (5) of the Act.

3. By refusing to provide the Union with information concerning the alter ego relationship between Electri-Tech and Electric One that is necessary and relevant to the performance of its function as the exclusive collective-bargaining representative of the unit employees, the Respondents have violated Section 8(a)(1) and (5) of the Act.

The Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents shall be ordered to recognize the Union as the exclusive collective-bargaining representative of the unit employees and to honor and abide by the terms of the collective-bargaining agreement with the Union.

We shall also order the Respondents to make whole unit employees for any loss of wages or benefits suffered by them because of the Respondents' refusal to abide by the terms of the collective-bargaining agreement with the Union, and as a result of the transfer of work and contracting jobs from Electric One to its alter ego, Electri-Tech, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondents shall further be required, upon request, to furnish the Union with information requested on March 12 and April 15, 1991.

## ORDER

The National Labor Relations Board orders that the Respondents, Electri-Tech, Inc. and Electric One, Inc., Oak Park, Michigan, alter egos and a single employer, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize Local 58, International Brotherhood of Electrical Workers, AFL–CIO as the limited exclusive collective-bargaining representative of the employees in the appropriate unit and refusing to abide by the terms of the collective-bargaining agreement with the Union. The appropriate unit consists of:

> All full-time and regular part-time employees employed by the Respondents performing electrical construction work within the jurisdiction of the Charging Union on all present and future jobsites; but excluding all guards and supervisors as defined in the Act.

(b) Transferring work and contracting jobs in order to avoid their bargaining obligation with the Union.

(c) Refusing to provide the Union with information that is necessary and relevant to the performance of the Union's role as exclusive collective-bargaining representative of the unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union as the limited exclusive collective-bargaining representative of the unit employees, and abide by all the terms and conditions of the collective-bargaining agreement with the Union.

(b) Make whole unit employees for any losses in wages or benefits they may have suffered because of the Respondents' refusal to abide by the terms of the collective-bargaining agreement, and resulting from the transfer of work and contracting jobs from Electric One to Electri-Tech, as set forth in the remedy section of this decision.

(c) On request, provide the Union with the information requested on March 12 and April 15, 1991, that is relevant and necessary to the Union's performance of its function as the limited exclusive collective-bargaining representative of the unit employees.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at the Respondents' facility in Oak Park, Michigan, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize Local 58, International Brotherhood of Electrical Workers, AFL–CIO as the limited exclusive collective-bargaining representative of our employees in the appropriate bargaining unit, and WE WILL NOT refuse to abide by the terms of our collective-bargaining agreement with the Union. The appropriate bargaining unit consists of:

> All full-time and regular part-time employees employed by the Respondents performing electrical construction work within the jurisdiction of the Charging Union on all present and future jobsites; but excluding all guards and supervisors as defined in the Act.

WE WILL NOT transfer work or contract jobs in order to avoid our bargaining obligation with the Union.

WE WILL NOT refuse to provide the Union with information that is necessary and relevant to the performance of its function as exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize the Union as the exclusive collective-bargaining representative of our unit employees, and WE WILL abide by the terms of our collective-bargaining agreement with the Union.

WE WILL make whole unit employees for any loss in wages or benefits they may have suffered because of our refusal to abide by the terms of our collective-bargaining agreement with the Union, and resulting from our unlawful transfer of work and contracting jobs, with interest.

WE WILL, on request, furnish the Union with the information requested on March 12 and April 15, 1991, that is necessary and relevant to the Union's performance of its role as the limited exclusive collective-bargaining representative of the unit employees.

ELECTRI-TECH, INC. AND ELECTRIC ONE, INC.